

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

CWP No. 235 of 2006.

Date of Decision: August 1, 2006.

Hakam Singh

.....Petitioner.

Versus

State of H.P. & others

.....Respondents.

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?¹

For the Petitioners: Mr. Rajnish Maniktala, Advocate.

For the Respondents: Mr. M.S. Chandel, Advocate General with Mr. J.K. Verma, Dy.
Advocate General for respondents No. 1 to 4.

Surjit Singh, J. (Oral):

Heard and gone through the record.

It appears that at the instance of the present Writ Petitioner proceedings were initiated against the predecessor of private respondents No. 5 to 7 for removal of encroachment after demolition of some building which he had allegedly raised on controlled width of certain road. Order for removal of encroachment was passed. That order was challenged by the predecessor of respondents No. 5 to 7 in this Court by

¹ Whether Reporters of Local Papers may be allowed to see the judgment?

filing a Writ Petition. This Court allowed the Writ Petition and quashed the order, inter alia, holding that there was no material on record suggesting that the road in question was a scheduled road. It may be stated that for invocation of jurisdiction under the provisions of the Himachal Pradesh Roadside Land Control Act, 1968, under which Act the proceedings were initiated and order was passed, the road has to be a scheduled road. When the Writ Petition was allowed, a request was made by the learned Advocate General that liberty be reserved to the State to initiate the action afresh against the predecessor of private respondents for demolition of construction if the said construction was found to be on a road, under the provisions of the Act. This Court clarified that even without taking the leave of the Court the Authorities were competent to take the action afresh.

The Writ Petitioner alleges that after the setting aside of the earlier order of removal of encroachment, on account of the allowing of the Writ Petition, the S.D.O. (C) who is an Authorized Officer for the purpose of the aforesaid Act, approached the Assistant Collector Ist Grade (Tehsildar), to seek demarcation, so as to find out whether the house of the respondents No. 5 to 7 actually stands on the controlled width. The Tehsildar has given the report that the house is outside the controlled width. The grievance of the Writ Petitioner is that when a demarcation had already been taken in connection with the earlier proceedings and the result of that demarcation indicated that a part of the house, in question, stood on the controlled width, where was the need for fresh demarcation and that the action ought to have been taken on the basis of earlier demarcation report. We do not find any merit in this contention of

the Writ Petitioner. Once the earlier Writ Petition had been allowed and the order and proceedings had been quashed, fresh proceedings could not have been initiated, unless the Authorized Officer was convinced, on the basis of fresh material, that the house or a portion thereof stood on the controlled width. Learned counsel has submitted that a Local Commissioner may be appointed by this Court for carrying out demarcation afresh. We do not think that it would proper to allow such a prayer while dealing with a matter in which extraordinary jurisdiction of the Court, under Article 226 of the Constitution of India, is sought to be invoked.

Further more, remedy of the Writ Petitioner lies elsewhere. The Authorized Officer applied to the Tehsildar under the provisions of H.P. Land Revenue Act for demarcation. If the petitioner is aggrieved by the result of that demarcation he should approach the superior Revenue Officer under the provisions of H.P. Land Revenue Act.

For the foregoing reasons, the Writ Petition is dismissed.

(V.K. Gupta), C.J.

August 1, 2006.
(rks)

(Surjit Singh), J.